

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.893 of 2003.

Date of Decision: 20th April,2007.

Ex.Hav. Gian Chand Sharma

...Petitioner.

-versus-

Union of India and others.

...Respondents.

Coram:

The Hon'ble Mr. Rajiv Sharma, Judge.

Whether approved for reporting? *Yes.

For the Petitioner. : Mr. Rahul Mahajan, Advocate.

For the Respondents : Mr. Ravinder Thakur, Central Government Counsel

Rajiv Sharma, J. (oral):

This petition is directed against Annexure-P4 dated 27.9.1994 and Annexure-P10 dated 31.3.1997. The brief facts necessitated for the adjudication of this petition are that the claim of the petitioner for disability pension was rejected by the Competent Authority on 27.9.1994. The ground for the rejection of the disability pension was that the injury was not attributable to the military service.

The petitioner preferred the appeal against the order dated 27.9.1994. The appeal was rejected on 31.3.1997. The appellate order states that since the petitioner has sustained injury on 11.8.1989 while he fell down from a civil Bus. Thus, no military duty was being performed by the petitioner at the material time of the accident.

I have perused the record and heard the parties.

Mr. Rahul Mahajan has submitted that his case is covered by the judgment of Hon'ble Supreme Court in 1995 Supp. (3) SCC 232, titled **Joginder Singh Vs. Union of India.**

* *Whether the reporters of the Local Newspapers may be allowed to see the Judgment?Yes.*

Mr. Ravinder Thakur, Central Government Counsel submits that though the ratio of the Hon'ble Supreme Court is not disputed but the ratio of the same will not apply to the facts of the present case.

The petitioner admittedly has suffered the injury while on leave on 4.8.1989 (during 31.7.1989 to 5.8.1989). Hon'ble Supreme Court has held in ***Joginder Singh's*** case that a soldier when on casual leave is to be treated as on duty. Their Lordships of the Hon'ble Supreme Court has held as under:-

“... The question for our consideration is whether the appellant is entitled to the disability pension. We agree with the contention of Mr. B. Kanta Rao, learned counsel for the appellant that the appellant being in regular Army there is no reason why he should not be treated as on duty when he was on casual leave. No Army Regulation or Rule has been brought to our notice to show that the appellant is not entitled to disability pension. It is rather not disputed that an army personnel on casual leave is treated to be on duty. We see no justification whatsoever in denying the disability pension to the appellant...”

In the present case, the petitioner has suffered injury while on leave on 4.8.1989 and he is to be treated on duty. The injury which the petitioner has suffered on 4.8.1989 is attributable to military service and accordingly the petitioner is entitled to disability pension.

Accordingly, the writ petition is allowed. The orders Annexures- P4 and P10 dated 27.9.1994 and 31.3.1997 respectively are quashed and set aside and direction is issued to the respondents that the petitioner will be paid disability pension on account of the injury. It is further directed that the respondents shall compute and

make the payment of arrears to the petitioner within a period of three months from the date certified copy thereof is supplied to them.

There will be no orders as to costs.

April 20, 2007.
(Gandhi)

(Rajiv Sharma)
Judge.